

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BUNGE, S. A.,  
Plaintiff,  
v.  
ADM INTERNATIONAL SARL,  
Defendant.  
and  
AMERICAN PETROLEUM TANKERS X LLC)  
ARCHER-DANIELS-MIDLAND COMPANY )  
ASHLAND SPECIALTY INGREDIENTS )  
G.P. CROWLEY GLOBAL SHIP )  
MANAGEMENT, INC. MOSAIC )  
FERTILIZER, LLC, )  
Garnishees. )

J. Caleb Boggs Courthouse  
844 North King Street  
Wilmington, Delaware

Thursday, February 10, 2022  
10:00 a.m.  
Oral Argument

BEFORE: THE HONORABLE RICHARD G. ANDREWS, U.S.D.C.J.

APPEARANCES:

YOUNG CONAWAY STARGATT & TAYLOR, LLP  
BY: TIMOTHY J. HOUSEAL, ESQUIRE

-and-

SIMMS SHOWERS LLP  
BY: J. STEPHEN SIMMS, ESQUIRE

For the Plaintiff

1 APPEARANCES CONTINUED:

2 RAWLE & HENDERSON LLP  
3 BY: JOELLE WRIGHT FLORAX, ESQUIRE

4 -and-

5 SQUIRE PATTON BOGGS  
6 BY: JOHN J. REILLY, ESQUIRE  
7 BY: EMILY HUGGINS-JONES, ESQUIRE

For the Defendant

10:02:30

10:02:30 8 \*\*\* PROCEEDINGS \*\*\*

10:02:30 9 DEPUTY CLERK: All rise. Court is now in  
10:02:31 10 session. The Honorable Richard G. Andrews presiding.

10:02:38 11 THE COURT: All right. Please be seated.

10:02:44 12 This is the hearing in *Bunge vs. ADM*

10:02:49 13 *International*, Number 22-26.

10:02:56 14 When you're speaking, if you're fully vaccinated  
10:03:01 15 and you want to take your mask off, you may. So, why don't  
10:03:08 16 we have the appearances for Bunge.

10:03:10 17 MR. HOUSEAL: Good morning, Your Honor. Tim  
10:03:15 18 Houseal of Young Conaway Stargatt & Taylor on behalf of  
10:03:18 19 Plaintiff, Bunge, S.A. We call it Bunge in my office, but  
10:03:23 20 I've been told by the client that it's, in fact, Bunge.

10:03:25 21 THE COURT: Okay.

10:03:26 22 MR. HOUSEAL: And with me today, Your Honor, is  
10:03:28 23 my co-counsel Stephen Simms of the firm Simms Showers out of  
10:03:32 24 Baltimore, Maryland, although he's returning home to  
10:03:34 25 Delaware where he grew up. He has been admitted pro hac

10:03:38 1 vice and has appeared before Your Honor in other maritime  
10:03:41 2 matters.

10:03:42 3 THE COURT: I've certainly seen his name on lots  
10:03:44 4 of papers. I don't know if I've actually seen you in  
10:03:46 5 person.

10:03:48 6 MR. SIMMS: Here I am.

10:03:49 7 MR. HOUSEAL: He does exist, Your Honor.

10:03:51 8 THE COURT: Thank you, Mr. Houseal.

10:03:52 9 All right. For ADM?

10:03:56 10 MS. FLORAX: Good morning, Your Honor. Joelle  
10:03:58 11 Florax of Rawle & Henderson on behalf of ADM. I'm here  
10:04:01 12 today with my co-counsel, Emily Huggins Jones and John  
10:04:05 13 Reilly from the law firm of Squire Patton Boggs. And  
10:04:10 14 they've both been admitted pro hac vice by Your Honor in  
10:04:15 15 this matter and they will be presenting our argument today.

10:04:17 16 THE COURT: So, it's Mr. Huggins and Ms. --

10:04:20 17 MS. FLORAX: Ms. Huggins.

10:04:22 18 THE COURT: Oh, Ms. Huggins and Mr. Reilly.

10:04:25 19 Okay.

10:04:32 20 Okay. Let me say that I have prepared for this  
10:04:35 21 hearing and I have read basically all the briefing. I've  
10:04:44 22 read now five declarations because I got one this morning.  
10:04:50 23 Two by Mr. Sarll and three by the two English lawyers for  
10:04:56 24 ADM. And I have read what I consider to be relevant cases.

10:05:09 25 So, I guess ADM is the one moving to vacate

10:05:15 1 this.

10:05:20 2 MR. REILLY: Good morning, Your Honor. I am  
10:05:27 3 John Reilly. I am fully vaccinated, Your Honor, and booster  
10:05:33 4 shot, so I would prefer to speak without my mask and as you  
10:05:35 5 invited us to do.

10:05:38 6 As you have heard, I'm here representing the  
10:05:41 7 Defendant, ADM, in regards to the motion to vacate. But  
10:05:48 8 before we get to that, there are two housekeeping items that  
10:05:51 9 I'd like to bring up.

10:05:55 10 We learned yesterday that Bunge has served a  
10:06:04 11 writ of attachment on one of the garnishees garnishing ADM.  
10:06:09 12 Now, that garnishee is the parent company of the company  
10:06:13 13 that I represent in this litigation. That garnishee, along  
10:06:17 14 with the other garnishees, had been served with writs of  
10:06:21 15 attachments emanating from the original Verified Complaint,  
10:06:25 16 which has now been superceded by the First Amended  
10:06:30 17 Complaint.

10:06:30 18 And our comments with respect to that service of  
10:06:34 19 process yesterday are as follows. One, we believe that the  
10:06:39 20 old writs of attachments are void now that a new prayer has  
10:06:45 21 been made to the Court for a new order of maritime  
10:06:49 22 attachments.

10:06:50 23 Two, what was served on the garnishee ADM was  
10:06:58 24 the old Verified Complaint as opposed to the new First  
10:07:03 25 Amended Verified Complaint, the First Amended Complaint.

10:07:05 1 Three, Your Honor had extended the time for all  
10:07:11 2 of the garnishees to respond until 21 days after a decision  
10:07:18 3 on this motion or if Your Honor would decide to make that  
10:07:23 4 date an earlier date. So, it seems to me that the same  
10:07:30 5 ruling should apply to this writ of attachment that was  
10:07:33 6 served yesterday.

10:07:33 7 I did confer with counsel about that asking why  
10:07:37 8 he had gone ahead and done it, and he explained, and I agree  
10:07:40 9 with his explanation, that in order for a writ of maritime  
10:07:45 10 attachment to be valid over an asset raise, there has to be  
10:07:51 11 something in the account. There has to be something there  
10:07:53 12 when the writ is served.

10:07:55 13 So, for example, on January 13th if ADM owed us  
10:07:59 14 money, and it's gone now, and now there's new money in, he  
10:08:05 15 would -- it's true, he has to serve again. But I do think  
10:08:08 16 it's inappropriate to go ahead and serve while Your Honor's  
10:08:12 17 order is outstanding and the technical aspects of the  
10:08:19 18 service are improper in that it was the old complaint  
10:08:22 19 instead of the new. And it was the old writ instead of the  
10:08:25 20 writ yet to be executed by this Court, issued by the clerk  
10:08:29 21 on your Court's order. So, I raise those points simply to  
10:08:34 22 object to that.

10:08:37 23 Secondly, we learned today that one of the  
10:08:43 24 garnishees has responded informally. So, there are five  
10:08:48 25 garnishees. One of them is our parent, we just talked about

10:08:52 1 that. Another garnishee is a company called Mosaic. I  
10:08:57 2 think it was Paragraph 17 in the First Amended Complaint  
10:09:01 3 which describes a bit who these various garnishees are.  
10:09:05 4 Evidently, the garnishee responded informally, as I say, to  
10:09:10 5 counsel that it's holding 400, and I'm going to say 408,000.  
10:09:15 6 I think that was the number, \$408,000.

10:09:17 7 This is the first we've heard of it. If that's  
10:09:21 8 true, among other things, it would certainly, I think, moot  
10:09:25 9 the first argument that I was about to present to Your Honor  
10:09:28 10 which was the standing argument, because Bunge has made an  
10:09:35 11 assertion that we have no standing to move to vacate the  
10:09:40 12 maritime attachment. They say because we are not  
10:09:44 13 claiming -- because they read Rule 4 as saying motion to  
10:09:50 14 vacate rule, pardon me, E(4)(f) of the supplemental rules,  
10:09:55 15 they read that as saying, A party who is claiming an  
10:09:59 16 interest in the attached in rem can bring a motion. And  
10:10:04 17 they said we didn't.

10:10:06 18 Now, we dispute that for reasons stated in our  
10:10:09 19 brief, in our reply brief. They cite two cases that we  
10:10:14 20 think are totally inapplicable. But according -- the point  
10:10:17 21 I want to get to sooner rather than later is that now it  
10:10:21 22 looks like they've attached \$408,000 of our money that would  
10:10:25 23 certainly render that first argument moot, in my view. But  
10:10:28 24 I'm absolutely prepared to go ahead and make our case as to  
10:10:33 25 why we do have standing.

10:10:35 1 And I can tell you very quickly we have standing  
10:10:39 2 because they're attempting to seize our property. That's  
10:10:42 3 what the prayer for relief says. It says seize the property  
10:10:45 4 of -- garnish the property of ADM in this district in the  
10:10:50 5 hands of these five garnishees. One of those garnishees  
10:10:55 6 says, Yeah, I've got that. I've got that.

10:10:56 7 The others, evidently, have not responded. The  
10:11:00 8 other four have not responded yet, but the response would  
10:11:03 9 have to be in regard to property of ADM's, my client, ADM.  
10:11:12 10 That clearly would make a claim to that property when we  
10:11:14 11 find out what it is, if they grant anything. Right now I  
10:11:17 12 can tell you we're making a claim to the \$408,000 that I  
10:11:21 13 just heard of.

10:11:22 14 So, I think that the two cases that Bunge has  
10:11:26 15 cited to support their position that we do not have  
10:11:31 16 standing, one is a case where the Defendant, the ship was  
10:11:38 17 arrested and seized. So, the Defendant, you know, so, I do  
10:11:41 18 not own that ship. So, the Court held in that case that it  
10:11:45 19 doesn't have standing. He doesn't own the property. He  
10:11:47 20 doesn't have standing to move to vacate that. Makes sense  
10:11:50 21 to me.

10:11:51 22 The other one, garnishees came forward. And the  
10:11:56 23 garnishees said they moved to vacate, and the Court said,  
10:12:00 24 Look, this is not your property. It's not the garnishee  
10:12:03 25 that moves to vacate. It's got to be the owner of the

10:12:06 1 property or the person that has a claim to that property.

10:12:09 2 And that case makes sense to us, too.

10:12:11 3 But, in this case, where the somewhat loosely  
10:12:17 4 described property of my client is trying to be -- they're  
10:12:25 5 trying to garnish that, obviously, when they identify it, we  
10:12:29 6 will claim it if it's ours as we claim the 408,000. So,  
10:12:34 7 I'll be happy to answer questions on that, but I think the  
10:12:36 8 big issue in our motion today is the issue that the ripe --  
10:12:43 9 the English counsel providing those affidavits are talking  
10:12:47 10 about ripeness. Our courts talk about ripeness. We are  
10:12:52 11 really claiming, and the case law supports our argument that  
10:12:59 12 in order to allege a maritime, a valid prima facie maritime  
10:13:06 13 claim, it has to be in regard to a claim that's justiciable,  
10:13:14 14 that's capable of being enforced now at the time the motion  
10:13:21 15 for the attachment is made. It can't be something that is  
10:13:26 16 half ready now and when something else happens down the  
10:13:29 17 road, like, you know, what your damages are or the third  
10:13:34 18 party who has a claim against the Plaintiff finally  
10:13:38 19 prevails, or there's a settlement of that claim and when --  
10:13:41 20 it can't wait for that.

10:13:42 21 And, Your Honor, with apologies, yesterday when  
10:13:45 22 I was looking at these papers, I came across a case that I  
10:13:49 23 should have remembered. I sent it last night to counsel.  
10:13:51 24 It's a case in 1965 in the Second Circuit. It's Judge  
10:13:58 25 Marshall, then Judge Marshall and he wrote an opinion, a



lengthy, detailed comprehensive analysis of an issue that had to do with arbitration, not attachment.

I want to recite on the record, the Greenwich Marine, the citation, which I will do here in a second. And what he held there and a very interesting decision -- thank you. Thank you. It is -- well, Greenwich Marine against the S.S. Alexandra decided September 24th. And the citation is 339 F.2d 901. Decided September 1, '96 -- decided January 1965.

So, in this somewhat detailed opinion that involved maritime arbitration, not an attachment, but the question was: Could the maritime Plaintiff compel arbitration? And there was an indemnity claim. It was an indemnity claim, as they've identified here, as we think we have here, and the judge, after thorough discussion, and the Court, Second Circuit, they held, No, you do not have a -- when all it is is an indemnity claim that has not yet matured, they use the word, they say, it's premature as opposed to not ripe. But they say when it hasn't matured so that you have actual damages, and you can't actually enforce it right now, that's not a justiciable maritime claim. And that's back in 1965.

And the case law has really evolved from that point. And it's become very relevant, become the issue in the maritime attachment cases. And if I may, just as a

1 general matter before we get into the detail, maritime  
2 attachments are, I think it's fair to say, that they're  
3 extreme remedies given to a maritime Plaintiff in  
4 recognition of the fact that maritime law is a global  
5 practice at least. Maritime trade is a global trade.

6 You have vessels, and largely this involves  
7 vessels coming into a port getting services in that port  
8 from the local folks and in New York. They put bumpers  
9 aboard. They provide piloting services. They put food  
10 aboard, things of that sort. And the vessel runs and then  
11 the vessel sails off. And you know, what you can do to  
12 secure a claim against the foreign entity.

13 So, these supplemental rules from maritime  
14 procedure have been designed to give a maritime Plaintiff  
15 some protection when you've got a maritime claim. But there  
16 are limits to that, of course. And Judge Marshall in  
17 Greenwich Marine recognized the limits with regard to  
18 arbitration.

19 Judge Kaplan, you know, I think that counsel,  
20 Mr. Sarll and in his affidavit as in the record, his  
21 declaration, his first declaration, I think he's right to  
22 focus on the Bottiglieri case, which is Judge -- which is  
23 cited in both of ours. And that's judge -- originally Judge  
24 Kaplan's decision in the Southern District of New York, and  
25 that his decision was affirmed by the Second Circuit.

10:17:45 1 And, again, it was what I'm calling an indemnity  
10:17:49 2 claim. You know, the English -- Mr. Sarll doesn't want --  
10:17:53 3 you know, he's resisting the idea that there's an indemnity  
10:17:57 4 claim. Bunge, in this action, in this court, they call them  
10:18:01 5 indemnity claims, and they are indemnity claims. But Judge  
10:18:05 6 Kaplan, when he looked at it, same basis factual narrative,  
10:18:10 7 but when he looked, he said, Look, maybe you've got three  
10:18:13 8 types of claims here. You've got a regular contract claim  
10:18:17 9 and then a second claim he didn't go into there. What he  
10:18:21 10 meant was the second claim would have been a contract claim  
10:18:24 11 with an express indemnity provision, a contract claim. And  
10:18:28 12 in that contract, it says, I promise to indemnify the other  
10:18:33 13 party for something.

10:18:34 14 So, you've got -- and then the third claim that  
10:18:36 15 he focused on more was a, I wouldn't say a contract claim,  
10:18:44 16 but an indemnity claim in the sense that it invoked a claim  
10:18:49 17 relating to a third party's claim against the Plaintiff.  
10:18:52 18 And he decided that that claim is not ripe. You know, and  
10:18:59 19 in so many words he said, it's not a justiciable maritime  
10:19:03 20 claim under Rule B in U.S. federal maritime law. That's  
10:19:09 21 basically what he was saying.

10:19:10 22 And the Second Circuit, they're very -- and by  
10:19:14 23 the way, what's I think there's a case -- that's after Aqua  
10:19:18 24 Stoli, that's after some of these other cases that we've  
10:19:21 25 been wrestling with in the briefs. I think maybe the

10:19:24 1 most -- it's -- it's back in -- it's a while ago. It's a  
10:19:29 2 decade ago. But the Second Circuit in a very brief decision  
10:19:34 3 said, the District Court saw what they saw. They analyzed  
10:19:40 4 the English law, and he exercised his discretion. They  
10:19:45 5 said, Judge Kaplan for District Court has the discretion to  
10:19:49 6 look at this and say, I do not think that this is ripe or  
10:19:55 7 justiciable. This is not ready to go yet; therefore, you  
10:19:59 8 cannot get a maritime attachment under Rule B because you do  
10:20:04 9 not have a justiciable maritime claim.

10:20:08 10 And that's really what that comes down to.  
10:20:11 11 That's the sum and substance of everything that we're  
10:20:14 12 talking about.

10:20:14 13 I'm not going to talk about Mr. Sarll's second  
10:20:17 14 declaration, which has been stricken, but in his first  
10:20:19 15 declaration as well, he spends a lot of time talking about  
10:20:24 16 causes of action. And it's not when the cause of action  
10:20:29 17 arises, it's when an enforceable cause of action arises.

10:20:35 18 So, that's what counts here in the analysis.  
10:20:41 19 So, we have submitted our -- you know, our two affidavits,  
10:20:45 20 one from my partner, Mr. Rollason and he's handling the case  
10:20:51 21 for ADMI in London. And another from the English counsel in  
10:20:55 22 London who's been retained by ADMI to represent him.

10:21:03 23 Mr. Rollason, in a declaration that was filed  
10:21:06 24 when we filed our original motion to vacate Paragraph 9  
10:21:11 25 lengthy paragraph, gets to that. That's the meat of it,

10:21:14 1 that Paragraph 9. And the last sentence or two in  
10:21:18 2 Paragraph 9, he gets to the point. He says, This is not --  
10:21:22 3 and look, under English law, this is not a claim that can be  
10:21:27 4 enforced. You can't get security for it or enforce it. The  
10:21:30 5 important thing is you can't enforce it. So, that's what he  
10:21:33 6 says in Paragraph 9.

10:21:36 7 And by the way, Mr. Coldrick, the other English  
10:21:42 8 counsel in his affidavit, he says, I agree with  
10:21:45 9 Mr. Rollason.

10:21:47 10 What's important, I think, and significant here  
10:21:49 11 is that in the one affidavit that's been in the record, I'm  
10:21:55 12 happy to look at the second affidavit, Mr. Sarll never  
10:21:58 13 disagrees.

10:21:59 14 THE COURT: So, Mr. Taylor -- oh, Mr. Reilly,  
10:22:02 15 sorry. Under your view, when would it become ripe here?

10:22:14 16 In other words, let's assume that at some point  
10:22:19 17 in the future there's an arbitration award against Bunge in  
10:22:31 18 the London arbitration. And then they come back here and  
10:22:38 19 say, Okay. Now, we've got an indemnity claim, and it's for  
10:22:42 20 that amount of award. You know, assuming the other things  
10:22:46 21 are met, is that now a prima facie valid or admirability  
10:22:53 22 claim?

10:22:53 23 MR. REILLY: If that claim arose, I'd be back  
10:22:55 24 before Your Honor and arguing that it's not, because I think  
10:22:57 25 it has to be paid. But I can see that apparently in London,

10:23:03 1 it just has to be enforceable in London. But, you know, we  
10:23:07 2 cite, for example, the Third Circuit case, not a maritime  
10:23:11 3 case, the Schwinn case in Baltimore, 2020, I think. And  
10:23:15 4 they talk about what's justiciable.

10:23:17 5 You know, I think an indemnity claim, I've  
10:23:20 6 always believed an indemnity claim is not justiciable until  
10:23:25 7 the indemnity has paid the third party. That's when it  
10:23:31 8 becomes -- that's when you've got a real claim.

10:23:33 9 But it may be, from what they're arguing, that  
10:23:37 10 in the U.K. under English law, the indemnity claim as soon  
10:23:41 11 as it's enforceable that that's a -- and so does -- the  
10:23:45 12 award when it's entered or a settlement is reached, then it  
10:23:50 13 becomes enforceable.

10:23:52 14 THE COURT: So, what's your view of the  
10:23:53 15 interaction of, on the one hand, you have an attachment  
10:23:58 16 garnishment procedure which is a U.S. law thing and you have  
10:24:04 17 these contracts which are all supposed to be -- well, which  
10:24:08 18 are all decided under English law. The cases that support  
10:24:14 19 your position, are they being decided as a matter of English  
10:24:19 20 law, or are they being decided as a matter of U.S. law,  
10:24:23 21 taking English law into account?

10:24:27 22 MR. REILLY: Great. I was about to say Judge  
10:24:31 23 Kaplan's decision in Bottiglieri and the others seem to be  
10:24:34 24 applying English law or trying to apply English law and  
10:24:38 25 deciding whether there's an enforceable claim and,

10:24:42 1 therefore, being a valid maritime claim in the U.S.

10:24:45 2 I'm not sure that that -- but, in any event, the  
10:24:51 3 cases so far are applying English law. And the answer is I  
10:24:58 4 don't know whether it's correct. It -- maybe it should be  
10:25:01 5 U.S. law because we're here. And the -- whether you have a  
10:25:04 6 claim under Rule B in the U.S. federal statutes, that seems  
10:25:10 7 to me it should be a U.S. law issue. But the cases do apply  
10:25:18 8 English law. But most of those English cases, most of those  
10:25:22 9 cases say it's not enforceable, therefore, it's not  
10:25:27 10 enforceable under English law, even under English law;  
10:25:32 11 therefore, you're not entitled to a maritime attachment  
10:25:35 12 under Rule B of the federal statute for maritime actions.

10:25:39 13 And --

10:25:40 14 THE COURT: Is it a requirement for Rule B  
10:25:43 15 attachment garnishment that there actually be a case in  
10:25:48 16 front of a tribunal somewhere? I think I know the answer to  
10:25:51 17 this, but I want to make sure.

10:25:52 18 MR. REILLY: If it had been settled, you know,  
10:25:57 19 the -- you know, absent a settlement, no settlement, only a  
10:26:03 20 claim, absolutely. You would have had to have started the  
10:26:07 21 arbitration and --

10:26:07 22 THE COURT: No, no, no. Think more broadly.  
10:26:10 23 Let's assume, you know, that there's a party out there that  
10:26:20 24 says the ship of some Delaware corporation bought, you know,  
10:26:25 25 \$400,000 of bunkers in St. Petersburg, and they say, You

10:26:31 1 didn't pay for it. Can they file the garnishment action  
10:26:37 2 here even though they haven't filed litigation anywhere to  
10:26:40 3 try to collect this \$400,000?

10:26:42 4 MR. REILLY: Yes.

10:26:42 5 THE COURT: Okay. That's what I thought the  
10:26:45 6 answer was.

10:26:46 7 MR. REILLY: And it happens all the time. And  
10:26:47 8 it's because that's the difference between an indemnity  
10:26:51 9 claim and a mere non-payment claim. They've got a right to  
10:26:55 10 get paid right now. They've submitted their invoice. They  
10:26:57 11 haven't been paid. Absolutely, go ahead and seize the  
10:26:59 12 vessel.

10:27:00 13 I want to segue way into another point that's  
10:27:06 14 part of this. It's related to this, and I think it  
10:27:09 15 illustrates what happens here.

10:27:10 16 In London, in the arbitration in London, as I  
10:27:14 17 understand it, Bunge's claim for something, 4 million or 8  
10:27:18 18 million. Now, they're asking for four, but they have a  
10:27:21 19 claim in London against ADMI. And most of that claim by far  
10:27:30 20 arises out of the fact that they may be held liable to --  
10:27:34 21 Bunge may be held liable to the shipowner. We're held  
10:27:38 22 liable to the shipowner. You know, we're going to get it --  
10:27:43 23 we're going to get -- pay ADMI who's liable to us. That's  
10:27:44 24 their point.

10:27:45 25 Some of it, though, about \$408,000 of that is



10:27:49 1 not that type of claim. It's more like a direct claim.  
10:27:55 2 It's a -- you know, they allege it is a direct claim against  
10:28:01 3 ADMI.

10:28:02 4 Some of it is for loss of hire, you know. So  
10:28:05 5 Your Honor knows, the vessel goes into Mississippi. It ties  
10:28:11 6 up at an anchorage. It has difficulties. The anchors. And  
10:28:17 7 there's a lot of delay. So, the vessel is put off hire.  
10:28:23 8 And there are other expenses in trying to retrieve the  
10:28:26 9 anchor, et cetera.

10:28:28 10 So, Bunge says, Hey, you've got to pay. You  
10:28:34 11 know, you chartered our vessel. The vessel has certain  
10:28:37 12 provisions as to what you pay. You should not have put us  
10:28:40 13 off hire. You know, we have that claim against you and we  
10:28:43 14 have a claim for some other items, \$408,000.

10:28:47 15 And Bunge here in this Court is arguing, Look,  
10:28:50 16 that's not an indemnity claim. We argued in our first  
10:29:00 17 motion to vacate that it's clearly derivative. We have that  
10:29:04 18 in a footnote. We say --

10:29:05 19 THE COURT: You say "derivative," but I got the  
10:29:07 20 impression from your expert or from your London lawyer that  
10:29:13 21 basically your argument is really it's contingent, too.

10:29:16 22 MR. REILLY: Exactly, because of the way they  
10:29:18 23 pled it. You know, we say here they pled that they have an  
10:29:22 24 indemnity claim. They should be held to that. There,  
10:29:25 25 Mr. Sarll, who is the counsel, he has pled that \$408,000

10:29:30 1 claim to the panel with a statement of a commitment. He's  
10:29:34 2 saying, Here's what we're going to do. We're going to go  
10:29:37 3 after the owner for that. That's what we're doing first.  
10:29:40 4 We're going after the owner.

10:29:42 5 We incurred those damages because the owner's  
10:29:45 6 ship was unseaworthy, bad anchors, and they didn't navigate  
10:29:51 7 properly, so we're going after the owner. If we lose that,  
10:29:54 8 then we're going to go after ADMI.

10:29:59 9 Now, that really brings it. So, that brings it  
10:30:02 10 back to a contingent. It's a contingent claim. They're  
10:30:06 11 only asserting that claim against us, if they lose against  
10:30:09 12 the owner. It's exactly like an indemnity claim.

10:30:13 13 So, for that reason as well, we think that --  
10:30:15 14 and we didn't know that until recently when we learned it  
10:30:20 15 here. And --

10:30:22 16 THE COURT: Well, your lawyer partner in London  
10:30:26 17 certainly knew whenever the claim was filed; right?

10:30:28 18 MR. REILLY: He knew it. It wasn't until we  
10:30:30 19 finally asked him that question. Right, exactly.

10:30:32 20 THE COURT: So, I have a different question.  
10:30:36 21 Let's assume Mosaic actually has \$408,000 that's yours or  
10:31:00 22 that's set in the garnishment, and let's assume that I say,  
10:31:03 23 yeah, go ahead, garnish it.

10:31:08 24 What does Mosaic do with the \$408,000?

10:31:12 25 MR. REILLY: Evidently, under the case law, it

10:31:15 1 would be up to Your Honor. They could either hold it. They  
10:31:18 2 could hold it and, you know, if we --

10:31:20 3 THE COURT: So, they could hold it or they could  
10:31:22 4 pay it in the registry of the Court?

10:31:24 5 MR. REILLY: Or pay it to the Court.

10:31:26 6 THE COURT: So, let's assume somewhere down the  
10:31:27 7 road that it turns out Bunge's claims are invalid, are lost.  
10:31:36 8 They don't win on for whatever reason. Do they owe you  
10:31:40 9 anything for holding on to your money or making it  
10:31:44 10 unavailable to you for a period of time?

10:31:46 11 MR. REILLY: You know, in these maritime  
10:31:49 12 attachment cases, if it ultimately turns out that the  
10:31:52 13 attachment was improper, the party claiming interest to the  
10:31:57 14 property that was attached could have a claim for wrongful  
10:32:01 15 attachment. But they're tough claims. They're very tough.  
10:32:06 16 They're made, and you would have to show some real -- if it  
10:32:12 17 was not abuse of process, it's a pretty high standard to win  
10:32:16 18 a claim for damages based on wrongful attachment.

10:32:20 19 THE COURT: And the damages you would get, is it  
10:32:22 20 more than just, you know, prime rate interest on the  
10:32:27 21 \$408,000, give or take, or, you know, could it be,  
10:32:33 22 therefore, we couldn't buy a new boat, and therefore, we  
10:32:37 23 didn't make \$6 million chartering that boat?

10:32:39 24 MR. REILLY: I mean, clever Plaintiff's counsel  
10:32:41 25 could devise, you know, additional claims and attorneys'

10:32:44 1 fees. You're always looking for attorneys' fees.

10:32:47 2 THE COURT: Is there a basis for that in  
10:32:51 3 admiralty law?

10:32:52 4 MR. REILLY: Well, if it was a wrongful  
10:32:53 5 attachment, and the Defendant had to come in and defend and  
10:32:56 6 then prove it was a wrongful attachment, yes, I think  
10:33:00 7 attorneys' fees would be appropriate in admiralty.

10:33:03 8 THE COURT: All right. This is a question that  
10:33:05 9 I would primarily ask of the Bunge people, but perhaps you  
10:33:11 10 know this. So, this arbitration that's filed in 2019,  
10:33:17 11 that's more than two-and-a-half years ago. As I understand  
10:33:23 12 it, the claims in the alternative were filed in 2019 by  
10:33:34 13 Bunge.

10:33:35 14 Has something happened? You know, what's the  
10:33:40 15 cause two years later of all of a sudden trying to garnish  
10:33:43 16 stuff?

10:33:43 17 MR. REILLY: Well, we were wondering that, and  
10:33:45 18 it seems -- respectfully, it's because more recently than  
10:33:48 19 that, there's been a settlement. So, the owners --

10:33:53 20 THE COURT: Oh, the Louisiana settlement?

10:33:55 21 MR. REILLY: Yeah. So, now they've got the  
10:33:57 22 numbers, and so they're cranking up the arbitration in  
10:34:01 23 London and getting to it.

10:34:03 24 THE COURT: Okay. Is that the reason, because I  
10:34:07 25 don't know and I'm not one to speak, but I thought

10:34:12 1 arbitrations were generally fairly speedy affairs. At least  
10:34:17 2 that was --

10:34:18 3 MR. REILLY: Yeah, they are in the U S, I think,  
10:34:20 4 my experience is. But in London, in addition to this, the  
10:34:25 5 unique problem here that they're looking for, the damages,  
10:34:28 6 it takes a long time to get a hearing. These London  
10:34:31 7 arbitrators who are well known and in great demand, you  
10:34:35 8 appoint them, but you have to get dates when they're  
10:34:38 9 available. That takes a while.

10:34:39 10 So, I think --

10:34:39 11 THE COURT: And I think you said or somebody  
10:34:42 12 said in the briefing that there's no particular schedule in  
10:34:45 13 this arbitration?

10:34:47 14 MR. REILLY: I didn't see that. Well, I mean,  
10:34:50 15 there's nothing wrong with -- the arbitrators are willing to  
10:34:52 16 let it go on as they are usually until some event happens  
10:34:57 17 that they can do that. There's no statutory provision  
10:35:02 18 compelling a certain schedule or anything like that that I'm  
10:35:05 19 aware of. That's English law.

10:35:08 20 THE COURT: Okay. I didn't see anything in the  
10:35:21 21 expert affidavits or the briefing that offered any opinion  
10:35:28 22 as to whether there's some English law equivalent to allow  
10:35:33 23 one go-around seizing assets.

10:35:38 24 Am I right that there's actually nothing in the  
10:35:40 25 record about that, first question?

10:35:44 1 And second question: If I am right about that,  
10:35:48 2 does that have any impact on what I'm supposed to be doing  
10:35:51 3 here?

10:35:53 4 MR. REILLY: Well, I think, ultimately, Your  
10:35:55 5 Honor has a lot of discretion here. That's number one.

10:35:58 6 But, you know, Mr. Sarll did go in quite a bit  
10:36:02 7 to the so-called freezing.

10:36:03 8 THE COURT: Right, but I understand that --

10:36:05 9 MR. REILLY: Right.

10:36:06 10 THE COURT: -- based on your expert's response  
10:36:08 11 and then Mr. Sarll's -- yeah, I think -- sorry, I'm used to  
10:36:13 12 the expert being Dr. Somebody or another. Mr. Sarll's  
10:36:16 13 response this morning that the freezing injunction is quite  
10:36:20 14 a different sort of beast. I mean, it's --

10:36:22 15 MR. REILLY: Yes, yes. They also have some -- I  
10:36:25 16 shouldn't even mention, but they have something called a  
10:36:28 17 Mareva injunction. I'm not quite sure what that does  
10:36:30 18 whether it's -- it may have nothing to do with this.

10:36:34 19 THE COURT: All right.

10:36:34 20 MR. REILLY: So, the answer, again, is I don't  
10:36:36 21 know.

10:36:36 22 THE COURT: Okay. All right.

10:36:44 23 So, why don't I give Mr. Simms a chance to  
10:36:47 24 respond to what you've said because I think you've covered  
10:36:50 25 most of the topics I'm interested in.

10:36:56 1 Wait a second. Okay.

10:37:00 2 Yeah. Why don't I hear from Mr. Simms.

10:37:03 3 MR. REILLY: Thank you, Your Honor.

10:37:07 4 MR. SIMMS: Your Honor, we have a classic  
10:37:20 5 English swearing contest here. And so, we are talking about  
10:37:25 6 English law. That is what controls. And also, what gets us  
10:37:31 7 here is the Federal Arbitration Act which is 9 U.S.C.  
10:37:36 8 Section 1, specifically Section 8, that allows for security  
10:37:43 9 in an arbitration, in maritime arbitrations. And so, you  
10:37:48 10 asked, you need a preexisting cause of action. In that  
10:37:53 11 case, we've got the arbitration which has been, as you  
10:37:58 12 pointed out, going on for quite a while. The claim in  
10:38:06 13 arbitration, and this is at Paragraph 12 of our -- of the  
10:38:12 14 Bunge First Amended Complaint is for damages. And that's  
10:38:16 15 what Mr. Sarll points out, damages under English law.

10:38:21 16 And when you look at the claim under English  
10:38:27 17 law, there is a claim for damages. There is a ripe claim,  
10:38:31 18 and Mr. Sarll presents the case law on that.

10:38:34 19 THE COURT: Well, you say "ripe," my impression  
10:38:38 20 was that Mr. Sarll said somewhere in there that ripeness  
10:38:43 21 isn't really an English law concept.

10:38:45 22 MR. SIMMS: That's right. That's what he said.  
10:38:47 23 Yes, he said if you've got enough to make a claim, which we  
10:38:52 24 do, which we have, then there is a cause of action under  
10:38:56 25 English law. He said that if there were no arbitration,

10:39:02 1 Bunge could go into the high Court, plead a cause of  
10:39:06 2 action -- would have a cause of action that would be  
10:39:08 3 recognized. And so, under English law, there is a claim.

10:39:14 4 And, of course, there is a claim right here at  
10:39:16 5 arbitration for indemnity and or damage for the losses set  
10:39:24 6 out in those four subparagraphs.

10:39:28 7 THE COURT: But I think you'd agree, wouldn't  
10:39:30 8 you, that what is called under English law doesn't  
10:39:37 9 necessarily mean that I have to call it the same thing under  
10:39:42 10 American law?

10:39:44 11 MR. SIMMS: Because English law controls, that's  
10:39:47 12 what the Court looks at. And the cases that the ADMI side  
10:39:54 13 cited, that is, that look to English law, draw that same  
10:39:59 14 conclusion. They say, Well, we have a charter party.  
10:40:02 15 English law controls. We have to decide now what English  
10:40:07 16 law says about this cause of action. Is there a cause of  
10:40:12 17 action? Is it for damages?

10:40:14 18 Not American law. American law is not pertinent  
10:40:18 19 here.

10:40:19 20 THE COURT: Well, I think it is because it's an  
10:40:21 21 American, you know, supplemental rule. Rules of admiralty,  
10:40:28 22 that's American law.

10:40:29 23 MR. SIMMS: There's an interesting set of cases,  
10:40:33 24 and this has ranged back and forth on whether Ford freight  
10:40:37 25 contracts controlled by English law could be the subject of



10:40:42 1 maritime attachment in the U.S. I can send the Court the  
10:40:47 2 ultimate Second Circuit decision that said, yes, you know,  
10:40:50 3 not under American law, but we look to English law because  
10:40:53 4 that's what controls the contract. Therefore, this is a  
10:40:57 5 maritime contract, Ford freight contracts.

10:41:00 6 Same thing, the first stop is: Does the  
10:41:03 7 contract that's involved, the contract between Bunge and  
10:41:08 8 ADMI which has English law, control? The Court then looks  
10:41:14 9 to that English law and says, because U.S. Courts, where  
10:41:21 10 there's sufficient connection between the parties, which  
10:41:24 11 there is, and the law of choice will honor choice of law  
10:41:29 12 clauses, the Courts look to that choice of law.

10:41:33 13 THE COURT: I don't think there's any dispute  
10:41:34 14 that English law applies. What that actually might mean is  
10:41:37 15 a different thing, but there's no argument that these  
10:41:41 16 contracts are not to be decided by English law.

10:41:45 17 MR. SIMMS: Yes. And there's another point  
10:41:50 18 about English law and the arbitration procedure. The London  
10:41:53 19 Society of Maritime Arbitrators, London arbitration is  
10:41:57 20 expensive. And English law provides for fee shifting. And  
10:42:03 21 so, Bunge already has laid out money in its proceedings  
10:42:10 22 against ADMI, which is subject to being secure. That is  
10:42:17 23 what we have also requested as security in the Second  
10:42:24 24 Amended Complaint.

10:42:25 25 THE COURT: First --

10:42:26 1 MR. SIMMS: We put in at least 500,000. So,  
10:42:38 2 that is an element of security. Bunge has already paid out  
10:42:46 3 money to arbitrators, not -- well, I think to arbitrators.

10:42:49 4 THE COURT: So, you say it's in the complaint.  
10:42:52 5 Which complaint are you talking about?

10:42:53 6 MR. SIMMS: This is both in the first and the  
10:42:55 7 second. We -- the second, we put in. This is at the prayer  
10:43:02 8 for relief, Page 6, the Amended Complaint.

10:43:05 9 THE COURT: I see.

10:43:05 10 MR. SIMMS: Further amount for accrued and  
10:43:09 11 accruing interest, also attorneys and arbitrators' fees of  
10:43:09 12 at least \$500,000 in security.

10:43:14 13 THE COURT: Right.

10:43:15 14 MR. SIMMS: So, that's real money that has been  
10:43:22 15 incurred in this claim, but and fees shifted under English  
10:43:28 16 law applied in the charter law. So, the question comes down  
10:43:35 17 to: Is this a contingent thing? That is, if I walked into  
10:43:43 18 court, and I'm thinking of an opinion we, I remember  
10:43:50 19 receiving, both sides, where a judge in Seattle a couple  
10:43:57 20 months ago said, Well, both of you are claiming against each  
10:44:00 21 other for a declaration, but this isn't ripe. It's not ripe  
10:44:04 22 because the thing you want the declaration about is whether  
10:44:08 23 or not you want to pay the Government. But the Government  
10:44:10 24 hasn't assessed any damages, so you have no cause of action  
10:44:12 25 under American law. Okay.

10:44:14 1 But that's not this. Looking to English law,  
10:44:18 2 there is a cause of action. Whether it's a pleading in the  
10:44:23 3 high court, and Mr. Sarll used the freezing injunction as an  
10:44:29 4 example. Now, a freezing injunction, you also need to be  
10:44:32 5 able to show -- there's a couple of elements. The one  
10:44:38 6 element that's not at issue here is: Is there enough money  
10:44:40 7 to satisfy the arbitration? That's not an issue. He just  
10:44:46 8 used that as an example to say, yes, you know, step one,  
10:44:49 9 there is a cause of action. So, there could be that first  
10:44:52 10 step shown to meet the freezing injunction.

10:44:58 11 As a matter of fact, under another example,  
10:45:00 12 English law for in rem action, he cites the English statute  
10:45:06 13 that says, yes, there's -- where you have a liability like  
10:45:11 14 this one, a breach of contract, which we say Bunge has done,  
10:45:15 15 breached the contract, yeah, or ADMI has, there is the right  
10:45:21 16 of in rem action.

10:45:23 17 Okay. Both analogies, English law.

10:45:30 18 The couple of cases, English law cases that ADMI  
10:45:36 19 cited involve something called an Inter-Club Agreement for  
10:45:40 20 cargo damage. And that's not involved here. That's a  
10:45:44 21 completely different issue. Basically, that's where the  
10:45:50 22 marine insurance involved have said, okay, we agree that  
10:45:53 23 we're going to put off resolution of questions like this  
10:45:56 24 until certain things happen. This isn't an Inter-Club case.  
10:46:01 25 It is a breach of contract case.

10:46:11 1 Let's see. Let me get to the question of  
10:46:14 2 standing. The exact number that Mosaic is holding is  
10:46:19 3 \$402,325.64. The reason that you need to serve maritime  
10:46:29 4 garnishment writs continuously, and this is what we put in  
10:46:34 5 the order, what we put in our orders for relief is that the  
10:46:39 6 garnishment writs only capture what's being held on the day  
10:46:44 7 that the writ is served. So, they're not continuous unless  
10:46:48 8 then the garnishee says, Yeah, it's okay. It can be  
10:46:52 9 continuous. So, that's why ADM got another writ.

10:46:58 10 This is an interesting question. So when we all  
10:47:03 11 first met, Mr. Reilly and I first met, I said, Okay, this  
10:47:08 12 isn't hard. Tell me if anything has been caught with ADM or  
10:47:15 13 anybody else, and then there's no issue because you have no  
10:47:20 14 Rule E(4)(f) claim. You're not claiming to any property.  
10:47:24 15 There's no property that's been seized. So, we don't have  
10:47:27 16 to do anything if there's nothing there.

10:47:30 17 And this is exactly what, you know, the  
10:47:35 18 challenge of Rule B is all about, which is you're never  
10:47:40 19 going to have the counterparty say, Oh, yes, we have a  
10:47:42 20 contract that is coming due on this date for this amount for  
10:47:47 21 this particular cargo. And, oh, yeah, make sure you put in  
10:47:53 22 there that it's the color green.

10:47:57 23 It's never going to happen. And so, is there as  
10:48:03 24 to the other writs other than Mosaic's a cause of -- that is  
10:48:10 25 a Rule E(4)(f) right of hearing, well, I don't think

10:48:19 1 anything has been claimed. The statute is very clear. And  
10:48:21 2 also Rule E(4)(f) hearings are not to be full evidentiary  
10:48:26 3 hearings. It's just to examine the factors of Rule B, all  
10:48:31 4 of which are met here. And really, the only one we've got  
10:48:36 5 that's anywhere at all fuzzy is whether there is a maritime  
10:48:43 6 claim.

10:48:43 7 And there is. Under English law, it's a claim  
10:48:47 8 for damages. It's a maritime claim.

10:48:49 9 THE COURT: So, Mr. Simms, ADMI cited various  
10:49:00 10 U.S. federal cases purporting to decide fairly similar  
10:49:06 11 issues. And from what I could tell in your brief, you said  
10:49:14 12 nothing about them. And as far as I could tell from your  
10:49:19 13 brief, you cited no cases deciding the similar issue  
10:49:25 14 differently.

10:49:26 15 Am I right?

10:49:29 16 MR. SIMMS: The reason, first, that the  
10:49:31 17 American -- the cases only dealing with American law aren't  
10:49:35 18 applicable, so that's why we didn't address those. The  
10:49:39 19 cases involving English law are not this case. And that's  
10:49:44 20 why -- and Mr. Sarll looks at the closest one, which is we  
10:49:49 21 did talk about the Bottiglieri case. And he looks at that,  
10:49:53 22 and he says, the way that they looked at the law is wrong.  
10:49:59 23 Not this case. This is a damages case.

10:50:02 24 And so, that was the way that the only nearby  
10:50:08 25 case was distinguished. We had an English lawyer barrister

10:50:14 1 look at that case and say, No, it's not English law. That's  
10:50:17 2 what the Court has to consider.

10:50:18 3 THE COURT: But in your actual brief, you didn't  
10:50:20 4 address it; right?

10:50:21 5 MR. SIMMS: Through Mr. Sarll's affidavit. What  
10:50:24 6 I say writing about English law doesn't matter. And so, as  
10:50:28 7 we got the motion to vacate coming in, what I said was --

10:50:34 8 THE COURT: Well, no, what you say does actually  
10:50:37 9 matter because you're an American lawyer, and the cases that  
10:50:41 10 are out there are American cases. Mr. Sarll's opinion about  
10:50:46 11 American cases, while I'm sure relatively intelligent, are  
10:50:52 12 not of an American lawyer reading the cases. So, you know,  
10:50:57 13 I'm not being -- you know, my only point is that in the body  
10:51:05 14 of your brief, you really did nothing to advance your  
10:51:09 15 argument.

10:51:11 16 MR. SIMMS: What we did was submit Mr. Sarll's  
10:51:21 17 affidavit. Let me give you my thinking on this. Okay.  
10:51:27 18 These are American cases that are purporting to look to  
10:51:32 19 English law. Okay. They're not saying -- their -- the only  
10:51:38 20 American law exit that they passed was we'll apply a choice  
10:51:44 21 of law clause.

10:51:46 22 And then, finding that English law applies, then  
10:51:51 23 the American lawyers and American judges are trying to apply  
10:51:56 24 under Rule 44.1 what English law says. And so, for me to  
10:52:03 25 say what an American Court says about English law isn't

10:52:07 1 helpful. What's helpful is for the barristers to come to  
10:52:10 2 you and say, This is English law as it applies to this case.  
10:52:15 3 I hope that makes sense.

10:52:18 4 THE COURT: All right.

10:52:19 5 MR. SIMMS: And under Rule 44.1, the Court can  
10:52:23 6 take any source it wants to make a decision that is under  
10:52:30 7 that foreign law. So, if the Court wanted to go dive into  
10:52:37 8 the Lexis database of High Court opinions --

10:52:40 9 THE COURT: Yeah, not something I want to do.

10:52:42 10 MR. SIMMS: Yeah, I understand.

10:52:44 11 THE COURT: So, I saw you nodding your head at  
10:52:52 12 various times when I asked questions of Mr. Reilly, so I  
10:52:57 13 think I know your answers to this. But the reason why this  
10:53:01 14 is being filed now two-and-a-half years after something was  
10:53:06 15 filed in the London arbitration is because of the settlement  
10:53:11 16 in Louisiana?

10:53:13 17 MR. SIMMS: Yes, and we have that in the  
10:53:15 18 complaint. That is, it doesn't say we're filing this now  
10:53:18 19 because of this, but we --

10:53:21 20 THE COURT: Okay. Well, no, no. You don't need  
10:53:23 21 to justify it. That makes sense to me.

10:53:25 22 MR. SIMMS: It's Paragraph 11.

10:53:27 23 THE COURT: All right. So, different question.  
10:53:32 24 Let's assume that I vacate the Rule B attachments and  
10:53:37 25 garnishment, really. Does it follow then that I just

10:53:42 1 dismiss the case in its entirety?

10:53:44 2 MR. SIMMS: No. The case is open. It is a case  
10:53:50 3 that has a summons issued. We would serve ADMI in  
10:53:58 4 Switzerland. ADMI would come back and respond what they  
10:54:00 5 respond.

10:54:01 6 THE COURT: Well, but if I vacate the  
10:54:05 7 Garnishment Order, then there's nothing to serve; right?

10:54:06 8 MR. SIMMS: There is a summons to serve.

10:54:11 9 THE COURT: Well, that's only assuming the case  
10:54:13 10 stays alive. It's kind of circular.

10:54:15 11 MR. SIMMS: Correct. The case will stay alive,  
10:54:18 12 and it needs to stay alive and here's why. Rule B requires  
10:54:23 13 two prongs to be met. One is that there's no resident agent  
10:54:30 14 in the district for service of process.

10:54:31 15 THE COURT: No, right. But I'm saying if  
10:54:33 16 there's no prima facie valid maritime claim, why would the  
10:54:38 17 case stay alive?

10:54:40 18 MR. SIMMS: Well, first, there hasn't been a  
10:54:48 19 motion to dismiss.

10:54:50 20 THE COURT: All right. So, I'm thinking ahead  
10:54:53 21 here.

10:54:53 22 MR. SIMMS: Yeah.

10:54:54 23 THE COURT: Because if I vacate the Garnishment  
10:55:01 24 Orders, what's left?

10:55:05 25 MR. SIMMS: Well --



10:55:06 1 THE COURT: And why shouldn't I dismiss the  
10:55:08 2 case?

10:55:09 3 MR. SIMMS: The reason the Court shouldn't  
10:55:12 4 dismiss the case is, first, if there's a motion to dismiss  
10:55:18 5 and it's granted, then we do take it up to the Third  
10:55:21 6 Circuit. I'm not quite sure how --

10:55:23 7 THE COURT: If I dismiss it after giving you a  
10:55:25 8 chance to tell me why I shouldn't dismiss it, you can still  
10:55:28 9 take it up to the Third Circuit.

10:55:30 10 MR. SIMMS: I understand. And the other reason,  
10:55:34 11 though, is because of Rule B. You asked Mr. Reilly, well,  
10:55:38 12 what, you know, in your opinion, is going to make it a  
10:55:42 13 proper Rule B case, and so the answer was, well, Bunge pays  
10:55:46 14 money. Okay.

10:55:47 15 THE COURT: But that is something that would  
10:55:50 16 happen in the future whether it's winning in an arbitration.  
10:55:54 17 And so, you could re-file the case if you actually get, you  
10:56:00 18 know, a valid maritime claim.

10:56:06 19 MR. SIMMS: Well, what likely would happen is  
10:56:09 20 that back to the requirement of Rule B, the requirement is  
10:56:14 21 that there not be a resident agent for the district in which  
10:56:17 22 it's processed and that there is no sufficient inpersonam  
10:56:24 23 jurisdiction. That is, it's --

10:56:26 24 THE COURT: Right, right. I think the other  
10:56:28 25 requirements we're not arguing about.

10:56:30 1 MR. SIMMS: Right. And so, what frequently  
10:56:33 2 happens when there are Rule B cases that are dismissed for  
10:56:36 3 whatever reason is there you go. It's time to file again,  
10:56:40 4 and you go up to the Delaware corporation's cite and there's  
10:56:45 5 a resident agent appointed. And so, the case needs to stay  
10:56:52 6 open so that we can serve when -- if the Court says we're  
10:56:57 7 not there.

10:56:58 8 THE COURT: Well, if we take the premise that  
10:57:00 9 you served, filed this case prematurely and that events on  
10:57:06 10 the ground change when it's not premature, why is there  
10:57:10 11 anything unfair about having the rules that are in place at  
10:57:14 12 the time?

10:57:14 13 MR. SIMMS: Boy, I don't know the answer to that  
10:57:36 14 one. What needs to be preserved is Bunge's right under the  
10:57:46 15 Federal Arbitration Act to get security for this  
10:57:48 16 arbitration. And if the case is totally dismissed, I guess,  
10:57:53 17 you know, then we would wait for there to be a remand or  
10:57:58 18 something.

10:58:00 19 But let's say we get up to the Third Circuit and  
10:58:03 20 the Third Circuit says, Yeah, you're right. It should have  
10:58:06 21 been dismissed. Then we'd have to file a new case and there  
10:58:11 22 would be a resident agent.

10:58:13 23 THE COURT: And what is the bad thing about if  
10:58:15 24 there's a resident agent?

10:58:17 25 MR. SIMMS: There can't be a Rule B.

10:58:19 1 THE COURT: So, but you still have all these  
10:58:21 2 Delaware corporations. Does that mean you cannot any longer  
10:58:27 3 do anything to collect debts that they owed to ADMI?

10:58:33 4 MR. SIMMS: What would happen is that if there  
10:58:42 5 was a final arbiter award, it would be brought back here and  
10:58:51 6 recognized. And there would be a post-judgment attachment  
10:58:58 7 that is on a --

10:58:59 8 THE COURT: And isn't post-judgment attachment  
10:59:04 9 roughly the equivalent of what's going on now?

10:59:07 10 MR. SIMMS: It would be, yeah.

10:59:14 11 THE COURT: So, okay. All right.

10:59:23 12 So, I do have -- well, go ahead. You have some  
10:59:26 13 further thought.

10:59:27 14 MR. SIMMS: Sure. The question -- I think at  
10:59:33 15 the very least, there are much more complicated questions of  
10:59:38 16 English law here that might be treated in a E(4)(f) here.  
10:59:46 17 And if the Court says, Well, you know, I think there's a  
10:59:49 18 doubt, then there ought to be more briefing on the issue.

10:59:55 19 But, at an E(4)(f) stage, the writs ought to be  
11:00:01 20 maintained.

11:00:04 21 THE COURT: I'm sorry, is that an E(4)(f)  
11:00:06 22 hearing that we're having right now --

11:00:08 23 MR. SIMMS: Yes.

11:00:09 24 THE COURT: -- because I'm not as conversant  
11:00:12 25 with the subparts and which letters and numbers go with. I

11:00:15 1 know we're having a hearing pursuant to the rules because I  
11:00:18 2 looked at the rules at the time that I got the motion.

11:00:20 3 MR. SIMMS: Yes.

11:00:22 4 THE COURT: But, okay.

11:00:22 5 MR. SIMMS: E(4)(f), and that's whenever  
11:00:29 6 property is arrested or attached, any person claiming an  
11:00:32 7 interest in it shall be entitled to a prompt hearing.

11:00:39 8 THE COURT: Right.

11:00:40 9 MR. SIMMS: And then the case law on that is  
11:00:42 10 that this hearing is -- it's not considered a full trial.  
11:00:46 11 It's considered to be a preliminary showing which is what  
11:00:50 12 Bunge is doing here saying, Yes, we have an English  
11:00:54 13 barrister opinion that says, This is a damages case. It's a  
11:00:59 14 live case. English law applies, which everybody agrees to.  
11:01:02 15 That meets the E(4)(f) standard.

11:01:06 16 And if the Court says, Well, all right, I think  
11:01:08 17 we need more briefing on this, the Court can say that, too,  
11:01:16 18 including getting live testimony from English barristers.  
11:01:19 19 We need to see that evidence.

11:01:25 20 THE COURT: All right. Do you have anything  
11:01:26 21 else you want to say?

11:01:35 22 Well, actually, let me just go back because  
11:01:37 23 you're talking about the \$402,000 of Mosaic. You know, in  
11:01:42 24 the briefing, you did say there's no standing. Is that an  
11:01:47 25 argument you're still pursuing?

11:01:49 1 MR. SIMMS: Not for Mosaic.

11:01:52 2 THE COURT: Okay.

11:01:52 3 MR. SIMMS: But for the others, yes. Now, if  
11:01:55 4 the ADMI side were to stand up and say, yes, as a matter of  
11:02:00 5 fact, and we know this because Archer-Daniels-Midland is our  
11:02:03 6 parent, you've caught something over a dollar, then there's  
11:02:13 7 standing to challenge that writ. But not the -- but,  
11:02:17 8 otherwise, there's no claim to anything.

11:02:18 9 THE COURT: Well, so, in other words, let's  
11:02:20 10 assume for the sake of argument that I vacate the Mosaic  
11:02:25 11 garnishment. Does that mean that I'd have another hearing  
11:02:29 12 every time somebody reports back to you that they've got  
11:02:31 13 some money?

11:02:34 14 MR. SIMMS: If you vacated the Mosaic  
11:02:38 15 garnishment, then I would think that decision would apply to  
11:02:41 16 other garnishments.

11:02:45 17 THE COURT: All right. So, in other words, if I  
11:02:49 18 vacated the one, you know, maybe the Third Circuit would be  
11:02:53 19 a visit, but you're not going to be trying to garnish the  
11:03:03 20 other things as long as it's based on the same theory as the  
11:03:07 21 one that I've rejected with Mosaic?

11:03:09 22 MR. SIMMS: No, there wouldn't be any point.  
11:03:14 23 Yeah. And since the -- I think the issue we're focusing on,  
11:03:19 24 it focused on is English law. All the other issues are not  
11:03:23 25 issues any more.

11:03:24 1 THE COURT: So, under English law, if  
11:03:27 2 Archer-Daniels-Midland International or some other portion  
11:03:33 3 of maybe, or somebody else who owed a debt to ADMI was in  
11:03:44 4 England, could you go out and do something equivalent to  
11:03:48 5 this in England?

11:03:50 6 MR. SIMMS: You can get, Mr. Reilly referred to  
11:03:55 7 this, a -- it's called an Mareva, Mareva injunction.

11:04:01 8 THE COURT: All right. And what is that?

11:04:03 9 MR. SIMMS: It's basically the English version  
11:04:06 10 of Rule B except that it requires a bond for twice the  
11:04:10 11 amount of the claim. But --

11:04:13 12 THE COURT: So, in other words, if you had a  
11:04:14 13 claim for maybe \$3.2 million, before you could go around  
11:04:20 14 seizing ADM property, you'd have to post a bond of \$6.4  
11:04:25 15 million?

11:04:25 16 MR. SIMMS: Correct. That's English law, but  
11:04:30 17 not American law. Because there's a difference between the,  
11:04:36 18 what's the word, lex fori and lex whatever it is, the choice  
11:04:40 19 of law. So, that's the difference here.

11:04:45 20 The other thing that Mr. Sarll referred to is a  
11:04:49 21 freezing injunction --

11:04:50 22 THE COURT: Right.

11:04:51 23 MR. SIMMS: -- which are really effective, but  
11:04:53 24 ultimately ADMI has money. So if we went to Court in  
11:05:00 25 England asking for a freezing injunction, they'd say, Are

11:05:02 1 you kidding? It's Archer-Daniels-Midland.

11:05:09 2 THE COURT: And it does seem kind of odd to me,  
11:05:20 3 though a lot of things in the law that are odd, that on the  
11:05:25 4 basis of English law, you're claiming a remedy, or remedy  
11:05:34 5 may not be the right word, but it wouldn't be available to  
11:05:38 6 you in England, but you say is available to you here.

11:05:42 7 MR. SIMMS: And that's what the Federal  
11:05:46 8 Arbitration Act provides for. And there are arbitrations in  
11:05:50 9 Singapore. There are the same, basically same law under  
11:05:54 10 Singapore law. They have their version of a Mareva  
11:05:58 11 injunction, but because of the Federal Arbitration Act,  
11:06:03 12 there can be security here for that arbitration.

11:06:08 13 THE COURT: Okay. Anything else you wanted to  
11:06:17 14 bring to my attention?

11:06:19 15 MR. SIMMS: No, sir.

11:06:20 16 THE COURT: Okay. Thank you, Mr. Simms.

11:06:22 17 MR. SIMMS: You're welcome.

11:06:24 18 THE COURT: Mr. Reilly, anything further from  
11:06:25 19 you?

11:06:27 20 MR. REILLY: Yes, Your Honor, just a few points  
11:06:29 21 that came up in counsel's presentation. The first one  
11:06:36 22 counsel began, again, by talking about cause of action. And  
11:06:39 23 I think it's clear that our position, our position is that  
11:06:43 24 it's not whether there's a cause of action. It's whether  
11:06:46 25 there's a justiciable cause of action within the meaning of

11:06:50 1 Rule B as interpreted by these various American law cases,  
11:06:55 2 which we'll encounter, has to be justiciable, not simply the  
11:06:59 3 cause of action.

11:07:00 4 Counsel mentioned that they have laid down money  
11:07:06 5 in London for arbitrators' fees. Two points with that.

11:07:13 6 One, I assume -- I believe that's subject to the  
11:07:18 7 event the --

11:07:20 8 THE COURT: In other words, that's contingent,  
11:07:21 9 too, because that's only if they win.

11:07:24 10 MR. REILLY: Exactly.

11:07:25 11 THE COURT: If they lose, then presumably you  
11:07:27 12 get arbitrators' fees.

11:07:28 13 MR. REILLY: Exactly. And that makes my second  
11:07:30 14 point maybe seem a little bit meaningless, but our position  
11:07:36 15 is that what's alleged in the Verified Complaint is gone.  
11:07:38 16 What counts now is the First Amended Complaint.  
11:07:43 17 Allegations, if they're not contained in the First Amended  
11:07:47 18 Complaint, Plaintiff has abandoned them, right, if they are  
11:07:51 19 not contained in the First Amended Complaint.

11:07:52 20 We have case law on that, and I don't see  
11:07:55 21 anything in the First Amended Complaint about the \$500,000,  
11:07:59 22 the arbitrators' fees, so, I mention that. We also have a  
11:08:02 23 contingencies fee argument.

11:08:05 24 You know, counsel is making the argument that,  
11:08:12 25 Okay, maybe there's a claim against Mosaic. In other words,



11:08:17 1 maybe we have an interest in Mosaic money.

11:08:20 2 And I think he's saying maybe we have an  
11:08:23 3 interest in whether our parent has anything. So, we have  
11:08:27 4 standing. I think he's conceding we have standing. I don't  
11:08:30 5 mean to -- I think he conceded that we have standing on  
11:08:33 6 those.

11:08:33 7 A third one that falls in that category is the  
11:08:36 8 first garnishee mentioned in the First Amended Complaint  
11:08:41 9 when the complainant alleges against various, I think it's  
11:08:47 10 17, various garnishees. And I think the very first one is  
11:08:53 11 in respect to a claim that ADMI is litigating in Louisiana  
11:08:58 12 against two of the named garnishees.

11:09:01 13 So, Plaintiff, Bunge, is saying, Look, they've  
11:09:06 14 got those claims against those two people in -- those two  
11:09:12 15 garnishees. And we can't attach that. No. That's not a  
11:09:19 16 Rule B. And Rule B(3) talks about credits, and their case  
11:09:25 17 law is on this, talks about credits, and debts and effects.  
11:09:30 18 That's what he gets to attach. So, if there's a credit, and  
11:09:34 19 there's a debt, and there's an effect, which I assume means  
11:09:38 20 is a piece of property. Even if everything else lined up,  
11:09:43 21 they would not be able, they would not have a right to  
11:09:46 22 attach whatever interest we have.

11:09:52 23 We have some interest. We have a lawsuit going  
11:09:55 24 on down in Louisiana, and we think it's a valid suit. We  
11:09:58 25 think some day we're going to collect on that, but we're not

11:10:01 1 there yet.

11:10:03 2 So, we have a right to vacate that as well.

11:10:06 3 Clearly, we have an interest, but it can't be attached.

11:10:11 4 So, and the same thing really goes with the  
11:10:13 5 other three, who I've mentioned the three, the other two  
11:10:18 6 garnishees. He's asking to attach our property or our  
11:10:23 7 interests, and we're saying we do not have -- you have not  
11:10:27 8 identified it sufficiently as something you could attach.

11:10:30 9 But, of course, we have -- if it's ours, we have an interest  
11:10:33 10 in it by definition. So, that's my point about litigation  
11:10:38 11 in Louisiana.

11:10:39 12 Counsel did mention a point that I forgot to  
11:10:42 13 mention which is about these ICAs, the Inter-Club  
11:10:48 14 Agreements. And I think they've varied over the years, I  
11:10:52 15 think according to statements that we have. The way it  
11:10:55 16 works now is lawsuits brought, let's say, in the United  
11:11:00 17 States against the owner and the charter, I mean, they both  
11:11:03 18 could have damaged the cargo. It's brought by cargo. So,  
11:11:06 19 they both could have damaged it.

11:11:08 20 They're not jointly and severally liable, but  
11:11:11 21 they could both be liable and individually. And each of  
11:11:14 22 those entities almost certainly are members of these  
11:11:20 23 insurance clubs that some are in Norway, some are in London.  
11:11:24 24 And those insurance clubs, I'll call them insurance clubs,  
11:11:30 25 they're P&I clubs, Protection & Indemnity Clubs, but those

11:11:33 1 clubs have entered an agreement that say, Look, in these  
11:11:36 2 cases where the Charter and the owner are sued, we're not  
11:11:40 3 going to fight among ourselves for good strategic reasons.  
11:11:45 4 And what we'll do is we'll see what happens. And if there's  
11:11:51 5 a judgment for the Plaintiff, in some circumstances, one,  
11:11:55 6 either the owner will try to pay a hundred percent or, in  
11:11:59 7 some circumstances, they'll divide it 50-50.

11:12:01 8 And I think it used to be the case in some  
11:12:03 9 circumstances, we'll arbitrate amongst ourselves here in  
11:12:06 10 London, but we're not going to. That is relevant here. You  
11:12:09 11 know, we cited those cases, and they came back and they  
11:12:13 12 said, Look, that's where there's a consensual contractual  
11:12:16 13 obligation to hold off. There's a commitment to hold off  
11:12:22 14 until we've sorted out -- it's the same thing here,  
11:12:27 15 certainly, with respect to the, I'll say, \$480,000 claim.  
11:12:32 16 We've talked about that.

11:12:34 17 But with all the claims, they are holding off  
11:12:37 18 because, first, they called them -- they're going to fight  
11:12:40 19 with the -- they're going to fight it out with the owners.  
11:12:44 20 And then depending on how that goes, they're going to fight  
11:12:48 21 it out with us.

11:12:49 22 So, those Inter-Club Agreement cases are very  
11:12:53 23 relevant by analogy at least. And I would put that forward.

11:12:59 24 Another point, when counsel is talking about,  
11:13:03 25 you know, we haven't advised him whether or not these hold

1 anything, we're not the garnishees. But the cases  
2 specifically say the maritime Plaintiff availing itself of  
3 Rule B attachment is not supposed to go on a fishing  
4 expedition.

5 This is not a fishing expedition. They serve  
6 the garnishee. They say -- it should say any debts, credits  
7 or effects, and that's it. So, we're not allowed to go on  
8 fishing expeditions.

9 You asked -- Your Honor asked some questions  
10 about whether the case would stay alive. And my analysis is  
11 this, it's a jurisdictional issue. So Rule B purports --  
12 again, it's been held as Constitutional. Rule B is strange.  
13 It says, it's giving the Court inpersonam jurisdiction to an  
14 extent, not really personam jurisdiction because it's only  
15 jurisdiction up to the value of what's garnished. And it  
16 has jurisdiction over the res in a way, even though it's not  
17 an in rem proceeding. It's a quasi in rem proceeding that  
18 gives limited inpersonam jurisdiction. But if there's no  
19 Rule B attachment, there's no jurisdiction in this Court  
20 regarding a dispute between these two Swiss entities arising  
21 out of contracts that call for English law. So, there would  
22 be no jurisdiction.

23 And in our motion to vacate, we did ask for a  
24 dismissal. It was in the motion. The maritime attachment  
25 should be vacated, and the case should be dismissed. That

11:14:56 1 was just in our prayer. We didn't elaborate because there  
11:15:01 2 would be no jurisdiction.

11:15:03 3 The final point, and I'm not sure of the answer,  
11:15:10 4 but counsel keeps on referring to the Federal Arbitration  
11:15:14 5 Act. And I'm certainly aware, it commences with the  
11:15:18 6 statement that you can even begin an arbitration with --  
11:15:23 7 even if you were, and you know that, you could seek  
11:15:25 8 securities.

11:15:26 9 But that's the Federal Arbitration Act. I'm not  
11:15:28 10 sure that that reaches out to arbitrations that are going on  
11:15:31 11 in London or gives the -- and in any event, it does not give  
11:15:38 12 the plaintiff any -- it just says if you have a right to  
11:15:43 13 security, then go get it.

11:15:44 14 So, you come back to Rule B. It doesn't give  
11:15:47 15 the Plaintiff any more rights to get an attachment than Rule  
11:15:51 16 B or if there's some other statute that's relevant we give.  
11:15:54 17 So, in and of itself, the Federal Arbitration Act doesn't  
11:15:58 18 give anymore rights to get an attachment then would exist  
11:16:02 19 otherwise. And am I'm not sure it's relevant here, and  
11:16:05 20 that's my final point.

11:16:07 21 THE COURT: All right. Thank you, Mr. Reilly.

11:16:37 22 All right. So, I think it's agreed, though it  
11:16:46 23 was contested in the briefing, that ADMI does have standing  
11:16:55 24 to challenge the garnishment relating to Mosaic based on the  
11:17:01 25 representations that have been made here today. And if I

1 thought I had to decide it, I probably would conclude that  
2 there's standing in regard to the other writs, also, but I  
3 don't think I actually have to decide it based on what  
4 Mr. Simms said about essentially that Bunge recognizes that  
5 whatever happens in regards to the Mosaic attachment or  
6 garnishment would apply to the other ones if there was  
7 something actually there to garnish.

8 And I would say some of the opinions I read,  
9 maybe all the opinions I read seem to actually have some  
10 actual thing that had been seized. So, even though it makes  
11 a certain amount of logical sense to me that if Bunge can  
12 get an order seizing things that belong to ADM, ADM ought to  
13 be able to challenge them without waiting for them to be  
14 seized. I don't think I really have to decide that.

15 So, the issue that the parties have concentrated  
16 on this morning, which I thought was the main issue in the  
17 case is whether or not there is a valid prima facie maritime  
18 claim as is required by the supplemental admiralty rule  
19 that's at issue here. ADMI cites various cases in its  
20 briefing for the proposition that a contingent indemnity  
21 claim is not a prima facie valid admiralty claim. For  
22 example, *DHL vs. Newlead* which is at 2016 Westlaw 6885650  
23 \*5, which is from the Southern District of Georgia decided  
24 November 18th of 2016 where the Court said, and I'm leaving  
25 out the citation to authority, "Fatal to the attachment at

1 issue is that attachment under Rule B is not available to  
2 obtain security for prospective contingent indemnity claims.  
3 This is because an action for indemnity is not ripe until  
4 there's been either a determination of liability or a  
5 settlement that establishes the purported indemnitor's  
6 obligation to pay."

7 The ADM also cites Bottiglieri di na Vigazione,  
8 I'll spell that for you later, vs. Tradeline, 472 F. Supp.  
9 2d 588 at 591 which is the Southern District of New York  
10 case from 2007, which was affirmed by the Second Circuit  
11 which I think said in the course of the affirmation that it  
12 was adopting the opinion or incorporating the opinion or  
13 something where it did more than just say affirmed  
14 indicating that it agreed with the analysis of the District  
15 Court.

16 And in that one, the District Court said this  
17 claim for indemnity is not ripe under English law.  
18 Plaintiff does not establish the "valid prima facie  
19 admiralty claim" required under certain sections of Circuit  
20 law.

21 And then I also have, which I don't think  
22 anybody cited, a case called *Pacific Gulf Shipping vs.*  
23 *Adamastos Shipping* 2019 Westlaw, 13043041 \*2 which is a  
24 Southern District of Texas case from March 13th of 2019  
25 where the Court said at various places, "Courts have

generally held that a Plaintiff's unripe indemnity claim is not qualified as a valid prima facie admiralty claim against the Defendant."

And later, "Like the Plaintiff in Bottiglieri, Plaintiff asserts an indemnity claim against Defendant which purports to serve as the basis for attachment when Plaintiff has yet to incur liability to the third party."

In the briefing, Bunge in its only brief, which is Docket Item 33, cites no cases holding to the contrary. Instead, they rely on the declaration of an English lawyer. And Bunge doesn't in its brief respond at all to the *DHL vs. Newlead* case or the Bottiglieri case, both of which were cited by ADMI in the motion which was Docket Item 21. And, again, in the supplemental motion Docket Item 32, both of which preceded the filing of Bunge's brief.

There's also been talk today of, and there was in the briefing of the claim for more than \$400,000. It's not an indemnity claim, but it is a contingent claim because the arbitration complaint, which is quoted in one of the lawyer's declarations says that it's only going to come to life if Bunge doesn't get relief in the suit against, I believe, what is the vessel owner.

And then today, and I don't know whether this was in the briefing or not, but I hadn't really noticed it in the briefing, Bunge also says, Well, we're asking for



11:24:02 1 \$500,000 of attorneys' fees, and that's a contingent claim,  
11:24:07 2 too, because, obviously, that depends on who wins in the  
11:24:11 3 arbitration.

11:24:12 4 So, all the claims that Bunge is making are  
11:24:19 5 contingent. And that's where I think there's some  
11:24:26 6 intersection between American law where the judges who have  
11:24:32 7 generally dismissed these kinds of claims have said they are  
11:24:35 8 not ripe, which sounds like an American law concept not an  
11:24:40 9 English law concept. And it's because they are contingent.

11:24:45 10 So, I agree with these other American judges who  
11:24:51 11 have decided this, and I don't think Mr. Sarll's declaration  
11:25:06 12 purports or does, in any way that I accept, help me  
11:25:21 13 understand what I'm supposed to do under the supplemental  
11:25:26 14 admiralty rule that's at issue here. So, I don't think the  
11:25:37 15 garnishment of Mosaic is a prima facie valid admiralty claim  
11:25:43 16 so; therefore, I'm going to vacate that garnishment.

11:25:51 17 There was also an argument in the briefing which  
11:26:02 18 has not been addressed this morning about an argument that  
11:26:14 19 Mr. Reilly hasn't made, as I said this morning, which had to  
11:26:19 20 do with the idea that I could reject the garnishment based  
11:26:26 21 on the fact that ADMI is a subsidiary of a Fortune30  
11:26:34 22 company, but I think the cases that he relied on were  
11:26:39 23 basically overruled. They were all Southern District of New  
11:26:43 24 York cases, and they were overruled in *Aqua Stoli*, as stated  
11:26:50 25 or analyzed in *Mediterranea Di Navigazione Spa vs.*

11:26:57 1 *International Petrochemical Group S.A.* 2007 Westlaw 1434985  
11:27:05 2 at \*3, Southern District of New York May 15th of 2007.

11:27:10 3 So, while my instinct is that this case ought to  
11:27:19 4 be just dismissed, I think the better thing to do, since I  
11:27:23 5 don't actually have to do that today, is I will just enter  
11:27:28 6 the limited Order vacating the garnishment as to Mosaic. I  
11:27:33 7 would ask the parties to meet and confer and report with  
11:27:37 8 some kind of joint status report in ten days how they want  
11:27:41 9 to proceed. If they want to proceed by filing motions and  
11:27:46 10 filing more briefing, they can agree to that. But if they  
11:27:50 11 do, then I would actually ask them to put some time into the  
11:27:54 12 briefing.

11:27:58 13 I sort of have the impression that I'm just  
11:28:00 14 getting recycled briefs from things you've filed in other  
11:28:03 15 places. And in particular, the ADM brief was, at a minimum,  
11:28:15 16 not cite checked, and it took me more time than it should to  
11:28:21 17 try to find the cases it thought it was citing to me.

11:28:26 18 Is there anything else I need to address this  
11:28:30 19 morning, Mr. Simms?

11:28:31 20 MR. SIMMS: And so with the Court's ruling,  
11:28:41 21 we're not going to require any response to the further writ  
11:28:45 22 served or anything like that. So, yeah, housekeeping, we  
11:28:51 23 tried to file Mr. Sarll's declaration as supplemental this  
11:28:55 24 morning.

11:28:56 25 THE COURT: I read it.

11:28:56 1 MR. SIMMS: And may we have the Court's  
11:28:59 2 permission to put it on the record?

11:29:02 3 THE COURT: It's on the record.

11:29:04 4 MR. SIMMS: But it wasn't filed.

11:29:07 5 MR. HOUSEAL: It got rejected, Your Honor.

11:29:08 6 THE COURT: Oh, I didn't know that. Why did it  
11:29:11 7 get rejected?

11:29:12 8 MR. HOUSEAL: Because the system treats it as a  
11:29:15 9 sur-reply, and we didn't have permission to file a  
11:29:19 10 sur-reply, even though it's just a declaration.

11:29:21 11 THE COURT: Okay. Well, I did wonder about, you  
11:29:24 12 know, filing something the morning, I don't know when  
11:29:28 13 exactly it was filed, but I saw it at about nine o'clock,  
11:29:32 14 you know, for a ten o'clock hearing. So, it didn't exactly  
11:29:40 15 make my day. But, in any event, I'm perfectly happy to give  
11:29:49 16 you oral permission to refile it. And if you need to do  
11:29:54 17 something to make that happen -- hold on a second.

11:30:01 18 (Discussion held off the stenographic record:)

11:30:17 19 THE COURT: All right. Well, I'll direct the  
11:30:21 20 clerk to accept the thing for filing. If it turns out  
11:30:27 21 there's more paperwork that's needed, I'm sure you'll  
11:30:30 22 provide the paperwork. But consider it part of the record.  
11:30:33 23 I didn't know it wasn't part of the record, because I'm not  
11:30:36 24 the one who rejects the filings.

11:30:39 25 Anything else?

11:30:40 1 MR. SIMMS: No, Your Honor.

11:30:40 2 THE COURT: Okay. Mr. Reilly, anything from  
11:30:42 3 you?

11:30:45 4 MR. REILLY: No, Your Honor.

11:30:46 5 THE COURT: Okay. Well, thank you very much.

11:30:47 6 This is a pleasant change from what I spend most of my time  
11:30:55 7 doing, but it's also a challenge because it is not what I  
11:30:59 8 spend most of my time doing.

11:31:01 9 Am I going to see you this afternoon, Mr. Simms?

11:31:03 10 MR. SIMMS: Yes, sir.

11:31:04 11 THE COURT: All right. A two for.

11:31:06 12 All right. We'll be in recess.

11:31:08 13 DEPUTY CLERK: All rise.

14 (Court was recessed at 11:31 a.m.)

15 I hereby certify the foregoing is a true and  
16 accurate transcript from my stenographic notes in the  
17 proceeding.

18 /s/ Heather M. Triozzi  
19 Certified Merit and Real-Time Reporter  
20 U.S. District Court  
21  
22  
23  
24  
25